

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 JACQUELYN ANN LE,

11 Plaintiff,

12 v.

13 OFFICER BAVA, et al.,

14 Defendants.

CASE NO. C15-1165JLR

ORDER DENYING PLAINTIFF'S  
MOTION TO JOIN AND  
GRANTING DEFENDANTS'  
MOTION TO DISMISS

15 **I. INTRODUCTION**

16 This matter comes before the court on Plaintiff Jacquelyn Le's motion to join the  
17 City of Kent and the Kent Police Department as defendants (MTJ (Dkt. # 27)), and  
18 Defendants Officer Bava, Officer Nixon, and the City of Kent's (collectively,  
19 "Defendants") motion to dismiss Ms. Le's second amended complaint (2d MTD (Dkt.  
20 # 18)). Ms. Le is proceeding *pro se* and *in forma pauperis* ("IFP"). In her second  
21 amended complaint, Ms. Le alleges Defendants are liable for civil rights violations  
22 including false arrest, unlawful search, inappropriate sexual contact, and racial

discrimination. (SAC (Dkt. # 16) at 6.) Having considered the submissions of the parties, the appropriate portions of the record, and the relevant law, the court DENIES Ms. Le's motion to join, GRANTS Defendants' motion to dismiss, DISMISSES Ms. Le's second amended complaint, and ORDERS Ms. Le to show cause within 15 days why amendment would not be futile with regard to Officer Bava.

## II. BACKGROUND

This case arises out of a July 23, 2014, incident between Ms. Le and certain members of the Kent Police Department. (SAC at 1.) On that day, Officer Bava was patrolling for the Kent Police Department. (*See* Am. Compl. (Dkt. # 12) at 13-16; SAC at 8 ("Police Report") at 5.)<sup>1</sup> While driving southbound on Pacific Highway, Officer Bava saw a van that he recognized as owned by Ms. Le and her husband, Khanh Le. (Police Report at 4.) Their Nissan van was recognizable because of the numerous anti-law enforcement signs on its exterior and an American flag that flew atop the van. (*Id.*)

Officer Bava followed the Nissan van, witnessed two illegal lane changes, and pulled up beside the van. (*Id.*) Officer Bava saw Ms. Le notice his patrol vehicle from her position in the passenger seat. (*Id.* at 5.) Officer Bava slowed down and got behind

---

<sup>1</sup> Ms. Le attached the first four pages of Officer Bava's five-page police report to her amended complaint, but only the fifth page of the report is attached to Ms. Le's second amended complaint. (*See* Am. Compl. at 13-16; SAC at 8.) However, Ms. Le references the contents of the first four pages of the police report in her second amended complaint. (*See* SAC at 1.) In light of Ms. Grant's *pro se* status, the court considers the second amended complaint as if the first four pages of the Police Report were attached. *See McGuire v. Clackamas Cty. Counsel*, No. 08-CV-1098-AC, 2009 WL 4456310, at \*2 n.2 (D. Or. Nov. 24, 2009) (considering exhibits attached to a *pro se* plaintiff's prior complaint). The court cites to the police report using its original pagination, not the page numbers created by the electronic filing system. (*See* Police Report at 1-5.)

1 the Nissan. (*Id.*) After the Nissan stopped at a red light, it rocked back and forth and “it  
2 was apparent to [Officer Bava] that the occupants were moving around inside the  
3 Nissan.” (*Id.*) Officer Bava pulled the van over because he believed Mr. Le had been  
4 driving with a suspended license. (*Id.*) Ms. Le alleges that she was driving the car at the  
5 time; either way, Ms. Le was behind the wheel when Officer Bava reached the side of the  
6 van. (SAC at 1; Police Report at 5.) Officer Bava told Ms. Le that she was under arrest,  
7 handcuffed her, and searched her person. (SAC at 3; Police Report at 5.) After reading  
8 Ms. Le her *Miranda* warnings, Officer Bava transported Ms. Le to “SCORE Jail,” where  
9 she was charged with making false statements and aiding and abetting driving with a  
10 suspended license. (SAC at 3; Police Report at 5.)

11 Ms. Le contends that Officer Bava’s actions constitute “unlawful apprehension  
12 and detainment” and “unlawful search . . . touching my breasts and genital area.” (SAC  
13 at 6.) Ms. Le further alleges that Officer Nixon, also of the Kent Police Department,  
14 made false statements under oath on June 10, 2015. (*Id.*) As recompense, Ms. Le seeks  
15 to recover her impound fee (\$300.00), her bail bond (\$200.00), her attorney’s fees  
16 (\$2,500.00), and damages for mental anguish caused by Officers Bava (\$250,000.00) and  
17 Nixon (\$250,000.00). (*Id.*)

18 Ms. Le filed her initial complaint in this matter on August 18, 2015 (Compl. (Dkt.  
19 # 6)) and voluntarily amended her complaint on September 25, 2015 (Am. Compl.). In  
20 Ms. Le’s amended complaint, she alleged various civil rights violations under 42 U.S.C.  
21 § 1983. (*See* Am. Compl.) The court concluded that Ms. Le’s amended complaint  
22 contained insufficient and legally conclusory allegations and dismissed Ms. Le’s

1 amended complaint for failure to state a claim. (1/5/16 Order (Dkt. # 15) at 8.) The court  
2 granted Ms. Le leave to amend, but cautioned her that if she failed to remedy the  
3 deficiencies in her amended complaint, the court would “treat that failure as evincing the  
4 futility of further amendment.” (*Id.*) Ms. Le filed her second amended complaint on  
5 February 1, 2016, and Defendants have moved to dismiss that complaint with prejudice  
6 under Federal Rule of Civil Procedure 12(b)(6). (*See* SAC; 2d MTD.) Ms. Le moves to  
7 join the City of Kent and the Kent Police Department as defendants in this matter.  
8 (MTJ.) These motions are now before the court.

### 9 III. ANALYSIS

#### 10 A. Ms. Le’s Motion to Join Additional Parties

11 Ms. Le filed a “motion to join additional party” in which she seeks to add the City  
12 of Kent and the Kent Police Department as defendants. (MTJ at 1.) The court has  
13 already indicated that it considers Ms. Le’s complaint as proceeding against the City of  
14 Kent as well as Officers Bava and Nixon. (1/5/16 Order at 7 n.4.) Therefore, Ms. Le’s  
15 request to add the City of Kent as a defendant is moot. The court directs the Clerk to add  
16 the City of Kent as a defendant to the court’s electronic docket.<sup>2</sup>

17 Ms. Le also seeks to join the Kent Police Department. (MTJ at 1.) “In order to  
18 bring an appropriate action challenging the actions, policies or customs of a local  
19 governmental unit, a plaintiff must name the county or city itself as a party to the action,

---

21 <sup>2</sup> The court dismisses with prejudice Ms. Le’s claims against the City of Kent. *See infra*  
22 §§ III.C-III.D. However, the court directs the Clerk to add and terminate the City of Kent to  
ensure the docket accurately reflects the parties to this case.

1 and not the particular municipal department or facility where the alleged violation  
2 occurred.” *See Bradford v. City of Seattle*, 557 F. Supp. 2d 1189, 1207 (W.D. Wash.  
3 2008) (dismissing the Seattle Police Department as a defendant because it “is not a legal  
4 entity capable of being sued”). The court therefore concludes that there is no legal theory  
5 under which Ms. Le could proceed against the Kent Police Department. Accordingly, the  
6 court denies Ms. Le’s motion.

7 **B. Legal Standard for Defendants’ Motion to Dismiss**

8 When considering a motion to dismiss under Rule 12(b)(6), the court construes the  
9 complaint in the light most favorable to the non-moving party. *Livid Holdings Ltd. v.*  
10 *Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005). The court must accept  
11 all well-pleaded allegations of material fact as true and draw all reasonable inferences in  
12 favor of the plaintiff. *See Wyler Summit P’ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658,  
13 661 (9th Cir. 1998). “To survive a motion to dismiss, a complaint must contain sufficient  
14 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”  
15 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S.  
16 544, 570 (2007)); *see also Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir.  
17 2010). “A claim has facial plausibility when the plaintiff pleads factual content that  
18 allows the court to draw the reasonable inference that the defendant is liable for the  
19 misconduct alleged.” *Iqbal*, 556 U.S. at 663.

20 The court, however, need not accept as true a legal conclusion presented as a  
21 factual allegation. *Id.* at 678. Although the pleading standard announced by Federal  
22 Rule of Civil Procedure 8 does not require “detailed factual allegations,” it demands more

1 than “an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* (citing  
2 *Twombly*, 550 U.S. at 555). A pleading that offers only “labels and conclusions or a  
3 formulaic recitation of the elements of a cause of action” will not survive a motion to  
4 dismiss under Rule 12(b)(6). *Id.* “Factual allegations must be enough to raise a right to  
5 relief above the speculative level on the assumption that all of the complaint’s allegations  
6 are true.” *Twombly*, 550 U.S. at 545. Lastly, although “the allegations of [a *pro se*  
7 plaintiff’s] complaint, ‘however inartfully pleaded’ are held ‘to less stringent standards  
8 than normal pleadings drafted by lawyers,’” *Hughes v. Rowe*, 449 U.S. 5, 9 (quoting  
9 *Haines v. Kerner*, 404 U.S. 519, 520 (1972)), this does not preclude dismissal where “a  
10 liberal construction does not remedy the palpable deficiencies in [the] complaint,”  
11 *Wallmuller v. Russell*, No. C14-5121RBL-JRC, 2014 WL 2475978, at \*2 (W.D. Wash.  
12 June 3, 2014).

### 13 **C. Defendants’ Motion to Dismiss**

14 In order to state a claim under 42 U.S.C. § 1983, Ms. Le must allege that some  
15 “person” has deprived her of a federal right and that the offending person was acting  
16 under color of state law. *See Gomez v. Toledo*, 446 U.S. 635, 640 (1980). Cities are  
17 “persons” that can be sued directly under Section 1983. *See Monell v. Dep’t of Soc.*  
18 *Servs.*, 436 U.S. 658, 690 (1978); *Delia v. City of Rialto*, 621 F.3d 1069, 1081 (9th Cir.  
19 2010). To state an adequate Section 1983 claim against a city, a plaintiff must  
20 “demonstrate that the alleged constitutional deprivation was the product of a policy or  
21 custom” of the city. *Bd. of Cty. Comm’rs v. Brown*, 520 U.S. 397, 403 (1997). Mere  
22 acquiescence in a single instance of alleged unconstitutional conduct is not sufficient to

1 demonstrate a policy or custom. *Gillette v. Delmore*, 979 F.2d 1342, 1348 (9th Cir.  
2 1992).

3 State officials sued in their official capacity for damages are not persons from  
4 whom a plaintiff can obtain relief under Section 1983 because state officials assume the  
5 identity of the government that employs them. *See Arizonans for Official English v.*  
6 *Arizona*, 520 U.S. 43, 69 n.24 (1997); *Hafer v. Melo*, 502 U.S. 21, 27 (1991). When sued  
7 in their personal capacity, however, state officials are persons under Section 1983. *See*  
8 *Hafer*, 502 U.S. at 31. Where the plaintiff seeks damages against a state official, a strong  
9 presumption exists in favor of a personal-capacity suit because official-capacity suits for  
10 damages are barred. *See Romano v. Bible*, 169 F.3d 1182, 1186 (9th Cir. 1999);  
11 *Shoshone-Bannock Tribes v. Fish & Game Comm’n, Idaho*, 42 F.3d 1278, 1284 (9th Cir.  
12 1994). Vicarious liability does not apply to Section 1983 suits, and “a plaintiff must  
13 plead that each Government-official defendant, through the official’s own individual  
14 actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 663. Considering these  
15 authorities, and construed in the light most favorable to Ms. Le, the allegations in the  
16 second amended complaint fail to give rise to a plausible right to relief.

17 The court previously dismissed Ms. Le’s claims against the City of Kent because  
18 Ms. Le “identifie[d] no policy whatsoever of the City of Kent” and “all of the  
19 constitutional violations Ms. Le alleges are conclusory.” (1/5/16 Order at 7 (citing *Iqbal*,  
20 556 U.S. at 678).) The court granted Ms. Le leave to amend and cautioned Ms. Le that if  
21 she “fail[ed] to remedy the issues identified” in the order, the court would “treat that  
22 failure as evincing the futility of further amendment.” (1/5/16 Order at 8.) Ms. Le again



1 fails to identify any way in which the alleged constitutional violations she claims to have  
2 suffered are related to an official policy or custom of the City of Kent. (*See generally*  
3 SAC.) By not alleging any facts about an official policy or custom, Ms. Le has failed to  
4 remedy the issues the court identified in its previous order. The court therefore dismisses  
5 Ms. Le's claims against the City of Kent.

6 Similarly, Ms. Le has failed to remedy the inadequacies in her amended complaint  
7 with regard to her allegations against Officer Nixon. Ms. Le previously alleged that on  
8 July 2, 2014, Officer Nixon issued tickets to Mr. and Ms. Le that were "five hundred  
9 numbers apart" (Am. Compl. at 1) and that Officer Nixon made false statements under  
10 oath on June 10, 2015 (*id.* at 3). The court dismissed these claims on the ground that they  
11 failed to state an actionable Section 1983 claim. (1/5/16 Order at 2, 8.) Ms. Le adds no  
12 detail to these allegations against Officer Nixon. (*See generally* SAC.) Instead, she  
13 recites the same two allegations: (1) that Officer Nixon issued tickets to Mr. and Ms. Le  
14 that were "five hundred numbers apart" (*id.* at 3-4); and (2) that Officer Nixon made a  
15 false statement on June 10, 2015, "when he mentioned under oath anti government signs  
16 on [Ms. Le's] van" (*id.* at 4). Ms. Le has failed to remedy the issues the court identified  
17 in its previous order. The court therefore dismisses Ms. Le's claims against Officer  
18 Nixon.

19 The court previously indicated that Ms. Le's allegations against Officer Bava  
20 failed to state a plausible right to relief because Ms. Le's allegations were "factually  
21 deficient and legally conclusory." (1/5/16 Order at 5-6 ("Ms. Le provides no facts about  
22 the incident besides those contained in Officer Bava's police report, which portrays a



1 routine traffic stop and reasonable charges against Ms. Le.”.) Ms. Le’s allegations  
2 against Officer Bava in her second amended complaint are for the most part just as  
3 conclusory and lacking in factual specificity as Ms. Le’s previous allegations.

4 Ms. Le alleges that Officer Bava “issued a false and illegal citation,” which is a  
5 conclusory statement the court disregards. (SAC at 2; 1/5/16 Order at 6 (citing *Iqbal*, 556  
6 U.S. at 678).) Similarly, the court disregards as conclusory Ms. Le’s allegations that  
7 Officer Bava pulled her over “with no probable cause,” and that her arrest was an  
8 “unlawful apprehension.” (SAC at 1-2.) These conclusory allegations also directly  
9 conflict with the information in Officer Bava’s police report, which provides the only  
10 nonconclusory factual account of the vehicle stop on the record. (See Police Report at  
11 4-5 (indicating that Officer Bava saw Mr. Le in the driver’s seat, that Mr. Le had a  
12 suspended license, and that the van made illegal lane changes).) Ms. Le also provides  
13 inadequate factual support for her racial discrimination allegations, which she supports  
14 with only two statements: “I am white and my husband is Asian,” and “I feel the actions  
15 made by Kent Police were racially motivated.” (SAC at 5-6.) These allegations are  
16 comprised of “labels and conclusions,” and as such they are insufficient to state a  
17 plausible claim against Officer Bava. See *Twombly*, 550 U.S. at 555.

18 The only allegation to which Ms. Le added relevant factual detail involves the  
19 search that Officer Bava performed on Ms. Le. (See SAC at 3; Police Report at 5.) Ms.  
20 Le previously alleged that Officer Bava committed an “unlawful search” and “touch[ed]  
21 my body improperly.” (Am. Compl. at 12.) The court concluded that those allegations  
22 fail to state a claim because Ms. Le provided “no facts about the incident besides those

1 contained in Officer Bava's police report, which portrays a routine traffic stop." (1/5/16

2 Order at 6.) The second amended complaint alleges that Officer Bava

3 without a female officer present, lewdfully searched me, he placed his  
4 hands on my breasts rubbing them then he placed his hands in my pockets  
5 next he ran his hands down the outside of my legs and up the inside of my  
6 legs proceeding to my genital area.

7 (SAC at 3.) Even construing these additional details in the light most favorable to Ms.

8 Le, the second amended complaint fails to state an actionable claim against Officer Bava.

9 The Fourth Amendment prohibits "unreasonable searches and seizures." U.S.  
10 Const. amend. IV. Barring misconduct, "a warrantless, full search of a suspect's person  
11 incident to a lawful arrest" is a reasonable search that the Fourth Amendment does not  
12 prohibit. *United States v. Morgan*, 799 F.2d 467, 469 (9th Cir. 1986) (citing *Chimel v.*  
13 *California*, 395 U.S. 752, 762-63 (1969)). Particularly when an officer transports a  
14 suspect in his or her police car, officer safety justifies a reasonable pat-down search of  
15 that suspect. *See Maryland v. Wilson*, 519 U.S. 408, 412 (1997). However, a search that  
16 involves sexual misconduct is unreasonable because there is no legitimate government  
17 interest that justifies it. *Fontana v. Haskin*, 262 F.3d 871, 880 (9th Cir. 2001).

18 For example, the Ninth Circuit held that a plaintiff stated a plausible Fourth  
19 Amendment claim under Section 1983 when she alleged that

20 [d]uring the ride to the station, [the defendant officer] wrongfully and  
21 inappropriately touched and sexually harassed plaintiff. His conduct  
22 included the following: telling plaintiff she had nice legs; telling plaintiff  
that he could be her "older man"; putting his arm around plaintiff;  
massaging her shoulders. Defendant's conduct persisted, even after  
plaintiff asked him to stop. At the police station, [the defendant] continued  
making sexual comments to plaintiff, including offering to "help her" in the  
restroom.

1 *Id.* at 875. However, the court cautioned that “not every truthful allegation of sexual  
2 bodily intrusion during an arrest is actionable as a violation of the Fourth Amendment”  
3 because “some bodily intrusions may be provably accidental or *de minimis* and thus  
4 constitutionally reasonable.” *Id.* at 880. For instance, a plaintiff failed to state an  
5 actionable Section 1983 claim by alleging that an officer “slapp[ed] him once on the  
6 butt,” because it was a “*de minimis* bodily intrusion and therefore must be deemed  
7 constitutionally reasonable.” *Bell v. King Cty.*, No. C07-1790-RSM, 2008 WL 4779736,  
8 at \*2 (W.D. Wash. Oct. 31, 2008).

9       Additionally, courts have held as a matter of law that there is no Fourth  
10 Amendment violation when a search incident to arrest “included incidental contact with  
11 [the plaintiff’s] breasts and genital area,” *Golden v. Cty. of Westchester*, No. 10-CV-8933  
12 ER, 2012 WL 4327652, at \*6 (S.D.N.Y. Sept. 18, 2012), and when during a search an  
13 officer “cupped [the plaintiff’s] groin area,” *Wright v. Cty. of Waterbury*, No. 3:07-CV-  
14 306 CFD, 2011 WL 1106217, at \*7 (D. Conn. Mar. 23, 2011). These cases contained  
15 testimony strikingly similar to Ms. Le’s allegations. In *Golden*, for example, the plaintiff  
16 alleged that the officer “had me stand up with my hands out. He search me up this way,  
17 went across my breast, came back that way . . . [t]hen he told me to put my hands on the  
18 back of the car, and he searched my bottom part. He went up my [ankles], came back up,  
19 touched my private part, went back down, told me to turn around, and he came down and  
20 searched the back of me.” *Golden*, 2012 WL 4327652, at \*6.

21       Ms. Le presents three distinct allegations of sexual misconduct on the part of  
22 Officer Bava. (SAC at 3.) First, Ms. Le alleges that there was no female officer present

1 during the search. *Id.* That allegation fails to state a claim because there is no  
2 constitutional right to be searched by an officer of the same sex. *See* Golden, 2012 WL  
3 4327652, at \*6. Second, Ms. Le alleges that Officer Bava “lewdfully searched me,”  
4 which is a conclusory statement the court disregards under *Iqbal*. (SAC at 3); *Iqbal*, 556  
5 U.S. at 678. Third, Ms. Le alleges that Officer Bava “placed his hands on my breasts  
6 rubbing them then he placed his hands in my pockets next he ran his hands down the  
7 outside of my legs and up the inside of my legs proceeding to my genital area.” (SAC at  
8 3.) This allegation fails to support a Fourth Amendment claim under Section 1983  
9 because it describes nothing more than the incidental, *de minimis* contact typical of a  
10 search incident to arrest. *See Fontana*, 262 F.3d at 880 (explaining that *de minimis*  
11 bodily intrusions incident to arrest are constitutionally reasonable).

12       Officer Bava placed Ms. Le under arrest before conducting a pat-down search.  
13 (Police Report at 5.) Officer safety justified a pat-down search because Officer Bava  
14 planned to transport Ms. Le to SCORE Jail in his patrol car. (*Id.*; SAC at 3); *see also*  
15 *Wilson*, 519 U.S. at 412. The only remaining question is whether Officer Bava engaged  
16 in sexual misconduct. Running one’s hands over a person’s body describes a routine pat-  
17 down search. *See, e.g., Bell*, 2008 WL 4779736, at \*2; *Golden*, 2012 WL 4327652, at \*6.  
18 “Rubbing” can be sexual in nature, but Ms. Le does not allege any facts that suggest that  
19 Officer Bava’s physical contact was sexual. (*See* SAC at 3.) In other words, Ms. Le’s  
20 allegations are more analogous to the claim that an officer “slapp[ed] plaintiff once on the  
21 butt” in *Bell* than the overt sexual advances in *Fontana*. *Bell*, 2008 WL 4779736, at \*2;  
22 *Fontana*, 262 F.3d at 875. Therefore, Ms. Le’s allegations of sexual misconduct by

1 Officer Bava do not give rise to a plausible right to relief “beyond a speculative level.”  
2 *Twombly*, 550 U.S. at 545. Accordingly, the court dismisses Ms. Le’s claims against  
3 Officer Bava.

4 **D. Leave to Amend**

5 When a court dismisses a *pro se* plaintiff’s complaint, leave to amend is  
6 mandatory unless it is absolutely clear that amendment could not cure the defects in the  
7 complaint. *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995). “A district court,  
8 however, does not abuse its discretion in denying leave to amend where amendment  
9 would be futile.” *Flowers v. First Hawaiian Bank*, 295 F.3d 966, 976 (9th Cir. 2002).  
10 The court previously illuminated many of the deficiencies in Ms. Le’s amended  
11 complaint. (See 1/5/16 Order at 8.) Those flaws largely remain in Ms. Le’s second  
12 amended complaint. *See supra* § III.C. Additionally, the court cautioned Ms. Le that if  
13 she failed to state a claim in response to the court’s order, the court would treat that  
14 failure as evidence of the futility of future amendment. (1/5/16 Order at 8.)

15 Ms. Le has failed to remedy the deficiencies in her amended complaint with regard  
16 to the City of Kent and Officer Nixon. *See supra* § III.C. Despite the court’s warnings,  
17 Ms. Le has not alleged additional facts that would give rise to a Section 1983 claim  
18 against these two defendants. Therefore, the court concludes that further amendment  
19 would be futile with regard to Ms. Le’s allegations against the City of Kent and Officer  
20 Nixon. Accordingly, the court denies Ms. Le leave to amend her second amended  
21 complaint with respect to these two defendants and dismisses her claims against the City  
22 of Kent and Officer Nixon with prejudice.

1 Ms. Le also failed to remedy the deficiencies in her amended complaint with  
2 regard to Officer Bava. The court concluded that the allegations in Ms. Le's amended  
3 complaint failed to state a claim because Ms. Le provided "no facts about the incident  
4 besides those contained in Officer Bava's police report, which portrays a routine traffic  
5 stop." (1/5/16 Order at 6.) Ms. Le did not add sufficient factual detail in her second  
6 amended complaint to allow the court to plausibly infer a right to relief "beyond a  
7 speculative level." *Twombly*, 550 U.S. at 545; *see also supra* § III.C.


8 Given that Ms. Le failed to state a claim against Officer Bava after amending her  
9 complaint, the court defers ruling on whether to allow Ms. Le leave to amend and orders  
10 Ms. Le to show cause why the court should not dismiss her claims against Officer Bava  
11 without leave to amend. In her filing, Ms. Le must indicate what factual detail about  
12 Officer Bava's search incident to arrest she would add to an amended complaint and how  
13 those allegations would allow the court to plausibly infer that her constitutional rights  
14 were violated. Ms. Le must submit this information within 15 days of the date of this  
15 order. If Ms. Le does not timely comply with this order or fails to show cause, the court  
16 will take that failure to indicate the futility of further amendment and will deny leave to  
17 amend.

#### 18 IV. CONCLUSION

19 The court DENIES Ms. Le's motion to join additional parties (Dkt. # 27) and  
20 GRANTS Defendants' motion to dismiss (Dkt. # 18). The court DISMISSES WITH  
21 PREJUDICE Ms. Le's claims against the City of Kent and Officer Nixon. The court  
22 DISMISSES WITHOUT PREJUDICE Ms. Le's claims against Officer Bava. The court

1 DIRECTS the Clerk to add and terminate the City of Kent as a party to this action. The  
2 court ORDERS Ms. Le to show cause within 15 days of the date of this order why  
3 amendment would not be futile with regard to her claims against Officer Bava. The court  
4 cautions Ms. Le that if she fails to timely show cause in response to this order, the court  
5 will treat that failure as an indication that amendment would be futile and will dismiss her  
6 claims against Officer Bava without leave to amend.

7 Dated this 20<sup>th</sup> day of May, 2016.

8  
9   
10 JAMES L. ROBART  
United States District Judge  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22